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HIGH COURT OF CHHATTISGARH

Writ Petition (C) No. 1852 of 2007

Petitioner:	Guddu Rai alias Vijay Prakash Rai
	Versus
Respondents	State of Chhattisgarh through the Secretary, Department of Excise and others.

Post for order 27-4-2007

Sd/-
Satish K. Agnihotri
Judge

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HIGH COURT OF CHHATTISGARH: BILASPUR

Writ Petition (C) No. 1852 of 2007

Petitioner	Guddu Rai alias Vijay Prakash Rai, son of Shri Ramvriksha, aged about 35 years, resident of 4B/Street No.71, Sector, P.S. Bilai Nagar, District Durg.

Versus

Respondents	1) State of Chhattisgarh, through the Secretary, Department of Excise, D.K.S. Bhawan, Mantralaya, Raipur.
	2) The Sub Inspector (Excise) Bhilai Circle No.1, Bhilai, District Durg,
	3) Ashok Renke, son of Shri Ram Renke, aged about 47 years, resident of Purana Shiv Mandir, Vaishali Nagar, P.S. Supela, District Durg.

(Petition under Article 226 of the Constitution of India)

SB: Hon'ble Shri Justice Satish K. Agnihotri

Present:

Shri Dinesh R.K. Tiwari, counsel for the petitioner.
Shri Utkarsh Verma, Dy. Govt. Advocate for respondents No. 1 and 2/State.

ORDER

(Passed on 27th April, 2007)

By this petition filed under Article 226 of the Constitution of India, the petitioner seeks quashing of the criminal proceedings pending against him and one Mr. Ashok Renke in Criminal Case No. 6735/2005 in the Court of learned Chief Judicial Magistrate, Durg and further quashing of warrants issued against him on various dates i.e., 5-12-2005, 20-3-2006, 2-5-2006, 7-11-2006 and 6-1-2007.

2. According to learned counsel for the petitioner, on 5-10-2005 the officers of the Excise Department raided the vacant house of one Late Shri Madhukar Rao, situated at in front of St. Xavier School, Kripal Nagar, Kohaka. Admittedly, the house was in possession of Mr. Ashok Renke. On raid, the liquor in heavy quantity was found stored without any license or permission from the Excise Department.

3. The Excise Authorities seized the said illegal liquor from the said house in presence of the witnesses and prepared a Panchnama and registered a case under provisions of Section 34 of the Excise Act, against the petitioner and Mr. Ashok Renke. During investigation it was found that the petitioner was also involved in the offence. Accordingly, the Excise Authorities filed a case in the Court of Chief Judicial Magistrate, Durg. The Chief Judicial Magistrate, Durg, took cognizance of the matter and framed charges against the petitioner and Mr. Ashok Renke. Warrants were issued against the petitioner on 5-12-2005, 20-3-2006, 2-5-2006, 7-11-2006 and 6-1-2007. It appears that the petitioner remained absconding and despite warrant, he could not be arrested and produced before the Magistrate.

4. The petitioner has filed this petition on the ground that the Chief Judicial Magistrate, Durg, without applying his mind registered a case against the petitioner. Thus, the criminal proceedings, charge and warrants issued against the petitioner be quashed. Learned counsel appearing for the petitioner further submits that this Court has admittedly jurisdiction to quash the charge-sheet, if on the basis of documents produced by the prosecution, it is found that the Magistrate has registered the case without application of mind.

5. The petitioner has not produced any documents except self same statement that he was not involved in the offence. The petitioner has further remained absconding despite warrant issued against him and has not come forward to put forward his case before the Magistrate for quashing the charge sheet. The petitioner has approached this Court without producing sufficient documents to quash the proceedings, charge as well as warrant issued against him on various dates.

6. The Supreme Court in the matter of **Mosaraf Hossain Khan Vs. Bhagheeratha Engineering Ltd. And others**[1] in para 25 held as under:

> "25. It is no doubt true that in a criminal matter also the High Court may exercise its extraordinary writ jurisdiction but interference with an order of the Magistrate taking cognizance under Section 190 of the Code of Criminal Procedure will stand somewhat on a different footing as an order taking cognizance can be the subject-matter of a revisional jurisdiction as well as of an application invoking the inherent jurisdiction of the High Court. A writ of certiorari ordinarily would not be issued by a writ court under Article 226 of the Constitution against a judicial officer. (See *Naresh Shridhar Mirajkar v. State of Maharashtra*). However, we are not oblivious of a decision of this Court in *Surya Dev Rai v. Ram Chander Rai* wherein this Court upon noticing *Naresh Shridhar Mirajkar* and also relying on a Constitution Bench of this Court in Rupa Ashok Hurra v. Ashok Hurra opined that a judicial court would also be subject to exercise of writ jurisdiction of the High Court. The said decision has again been followed in *Ranjeet Singh v. Ravi Prakash*. It is, however, not necessary to dilate on the matter any further. The jurisdiction of the High Court under Section 482 of the Code of Criminal

[1] (2006) 3 SCC 658

Procedure was noticed recently by this court in *State of U.P. v. Surendra Kumar* holding that even in terms thereof, the Court cannot pass an order beyond the scope of the application thereof. In *Surya Dev Rai* we may, however, notice that this Court categorically stated that the High Court in issuing a writ of certiorari exercises a very limited jurisdiction. It also made a distinction between exercise of jurisdiction by the High Court for issuance of a writ of certiorari under Articles 226 and 227 of the Constitution. It categorically laid down that while exercising its jurisdiction under Article 226, the High Court can issue a writ of certiorari only when an error apparent on the face of the record appears as such; the error should be self-evident. Thus, an error according to this Court needs to be established. As regards exercising the jurisdiction under Article 227 of the Constitution of India it was held: (SCC p.689, para 24).

"The power may be exercised in cases occasioning grave injustice or failure of justice such as when (i) the court or tribunal has assumed a jurisdiction which it does not have, (ii) has failed to exercise a jurisdiction which it does have, such failure occasioning a failure of justice, and (iii) the jurisdiction though available is being exercised in a manner which tantamounts to overstepping the limits of jurisdiction."

7. Applying to the well settled dictum laid down by Supreme Court to the facts of the case, wherein no material facts have been produced before this Court, ordinarily the High Court should not interfere with an order taking cognizance passed by a competent Court of law except in a proper case.

8) As a result, for the reasons stated hereinabove, this petition is dismissed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Raju